

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	HON. JOEL A. PISANO
	:	
v.	:	Criminal No. 09-858 (JAP)
	:	
BENJAMIN PENA	:	NOTICE OF OMNIBUS MOTIONS
	:	
	:	

TO: Department of Justice
Criminal Division, Fraud Section
1400 New York Avenue NW
3rd Floor
Washington, D.C. 20005
Attention: Brigham Q. Cannon, Assistant U.S. Attorney

Counselor:

PLEASE TAKE NOTICE that the Defendant, BENJAMIN PENA, through his attorney, John M. Holliday, Esquire, shall move before the Honorable Joel A. Pisano, United States District Judge, United States District Court for New Jersey, on a date and time to be set by the Court, for the following relief:

1. Compelling the government, pursuant to it's obligations pursuant to R. 16, Federal Rules of Criminal Procedure, and the doctrine of Brady v. Maryland, 373 U.S. 83 (1963) to provide exculpatory or impeaching evidence with respect to the government or defense witnesses, including all other evidence tending to negate the guilt of Benjamin Pena as to the offenses charged in the indictment, including the names and

addresses and statements of any individuals interviewed by the government who stated that they had no knowledge of wrongdoing by the Defendant, Benjamin Pena, and all evidence in possession of the government from which it can be inferred that any person whom the government intends to call as a witness at trial is untruthful;

2. Requiring the government to provide Jenck's material to the Defendant no later than 24 hours prior to the opening statements at trial;

3. Requiring the government to retain all rough notes taken by government law enforcement officers in the case and provide same to the Defendant and/or the Court for inspection prior to the testimony of that person;

4. Requiring the government to disclose, no later than ten (10) days before trial, its intention to use any evidence under the Federal Rules of Evidence 404(b) and permitting a pre-trial hearing to determine the admissibility of prior conduct evidence the government intends to use pursuant to Federal Rules of Evidence 404(b);

5. Compelling the government to provide, no later than ten (10) days before trial, a written summary of the testimony of any expert the government intends to introduce at trial.

6. For an Order under 104(a), Federal Rules of Evidence, barring the introduction of co-conspirators' statements

under R. 801(d)(2)(E), Federal Rules of Evidence, and for a pre-trial in limine hearing to determine the preliminary question of admissibility.

7. Compelling disclosure of informants' identities pursuant to Federal Rule of Criminal Procedure 12(d)(2) and 16(a), and pursuant to Roviaro v. United States, 353 U.S. 53 (1957) and Brady v. Maryland, 373 U.S. 83 (1963).

8. Suppressing statements made by Defendant pursuant to Federal Rule of Criminal Procedure 12(b)(3).

9. Permitting the Defendant, Benjamin Pena, to join in any motions filed on behalf of co-defendants and to adopt the arguments of counsel where applicable.

10. Permitting the Defendant, Benjamin Pena, the right to make any additional motions which may be necessitated as including the right to raise certain defenses pursuant to Fed. R. Crim. Pro. 12(f).

PLEASE TAKE FURTHER NOTICE that counsel will rely upon the enclosed brief and oral argument.

s/ John M. Holliday, Esq.
JOHN M. HOLLIDAY, ESQUIRE
2273 State Hwy. 33, Suite 207
Trenton, New Jersey 08690
Phone No. (609) 587-1010
Attorney for Defendant
Benjamin Pena

Dated: March 10, 2010

CERTIFICATION OF FILING AND SERVICE

I hereby certify that on March 10, 2010, the original and one (1) copy of the within Notice of Omnibus Motions and Legal Brief were served via electronically and regular mail to the Clerk's Office, United States District Court, District of New Jersey, and copies thereof were sent electronically and regular mail to the Department of Justice, Criminal Division, Fraud Section, Washington, D.C., Attention, Brigham Q. Cannon, Assistant U.S. Attorney, and all counsel of record.

s/ Ryan L. Fiabane_____
RYAN L. Fiabane
Legal Assistant

Dated: March 10, 2010